

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GARY CRUZ, Individually and on behalf of
All others similarly situated,

Plaintiff,

- Against -

TD BANK, N.A.

Defendant.
-----x

Case No. 10-cv-08026 (PKC)

REPLY DECLARATION
OF G. OLIVER KOPPELL
IN SUPPORT OF MOTION
TO VACATE JUDGMENT

G. Oliver Koppell declares under the pains and penalties of perjury:

1. I am the principal attorney of the Law Offices of G. Oliver Koppell & Associates, counsel for the Plaintiffs and the putative class in this proceeding.
2. I make this affirmation in further support of Plaintiffs' motion to vacate the judgment of dismissal in this matter pursuant to Fed.R.Civ.P. 60(b)(1) or Fed. R. Civ.P. 60(b)(6) and for leave to file and serve a Second Amended Complaint pursuant to Fed.R.Civ.P. 15(a)(2).
3. In my earlier declaration to the court in support of our motion, I addressed the question of whether the delay in filing and serving a proposed second amended complaint was based upon an attempt to gain tactical advantage in light of other pending cases raising similar issues to those in this case.
4. In response to this issue, in my sworn declaration, I stated: "there was absolutely no tactical advantage to our clients or our firm to the delay. I had engaged in no discussion regarding such tactic nor had I even contemplated such a possibility." In a separate sworn declaration my associate, Daniel F. Schreck, also declared under penalties of perjury that "No intentional attempt to delay this action for any reason,

strategic or otherwise, has ever been discussed, contemplated or taken by Plaintiffs' counsel."

5. Notwithstanding these sworn representations, Defendant's counsel in the preliminary statement to Defendant's memorandum of law opposing plaintiffs' motion, dated December 8, 2014, states: "Plaintiffs' failure to diligently pursue the civil action...was designed to avoid the leadership of this Court over the Exempt Income Protection Act ("EIPA")."
6. Defendant's counsel proceeds in section III A.2 of its memorandum of law to argue that we "Transparently Pursued Identical Proposed Amendments in Other EIPA Related Class Actions to Avoid this Court" and that there is "the fair inference that Plaintiffs' counsel made the strategic decision to delay filing the SAC in this civil action to avoid this Court's leadership on EIPA." In addition, Defendant's counsel states "Plaintiffs' actions to strategically delay this proceeding shows Plaintiffs' lack of good faith in seeking the equitable relief to vacate the judgment."
7. In light of my sworn representations and those of my associate, Defendant's counsel is repeatedly accusing me and my associate of lying under oath. I find such accusations to be an outrage. I respectfully request that the court strike from Defendant's papers these unsupported and defamatory allegations.
8. As stated in our motion papers, the only reason why a second amended complaint was not filed earlier was the absence of a specific deadline and the press of other matters that had to be completed by specific dates. There was no thought given to strategic advantage and indeed, as set forth in my associates' declaration, no strategic advantage was or could have been gained by the delay.

9. I respectfully request oral argument so that I may address any concerns that the Court may have over my motivation in connection with this matter.

Dated: New York, New York
December 18, 2014



G. Oliver Koppell